

REMARKS

Applicant has amended claim 1 to incorporate the limitations of claim 20.

Claims 19 and 20 have been cancelled by this amendment.

Claims 2-4 and 10-18 were cancelled in prior responses.

Claims 1 and 5-9 are currently pending in the application.

Claims Rejections

Claims 1, 5, 6, and 19, are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,877,520 to Burns, (“Burns”) and rejected claims 7-9 under 35 U.S.C. §103(a) as being unpatentable over Burns.

The rejections are respectfully traversed in view of the amendment to claim 1.

Of the claims rejected, claims 19 has been cancelled, claim 1 is independent, with the remaining claims dependent thereon.

Claim 1 has been amended to incorporate the limitations of claim 20. Claim 20 was not included in the §102(b) rejection or the §103(a) rejection listed above, and thus this rejection is rendered moot.

Claims 1, 5, 6, and 20, are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,426,295 to Evans et al., (“Evans”) and claims 7-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Evans.

The rejections are respectfully traversed.

Of the claims rejected, claim 20 has been cancelled and incorporated into claim 1; claim 1 is independent, with the remaining claims dependent thereon.

Amended Claim 1 recites among other things an assembly with the following features:
an elongate tubular housing having opposed first and second ends; and
a solid partition positioned within said housing between said first and second ends;....
said second end comprising a bottom end below said partition, said bottom end comprising an annular skirt and a semi-spherical bottom.

Applicant submits that Evans fails to disclose at least the claimed features of: a solid partition positioned within the housing between the first and second ends.

The Examiner proposes that Evans (See Fig.1 shown below) discloses a solid partition (3).

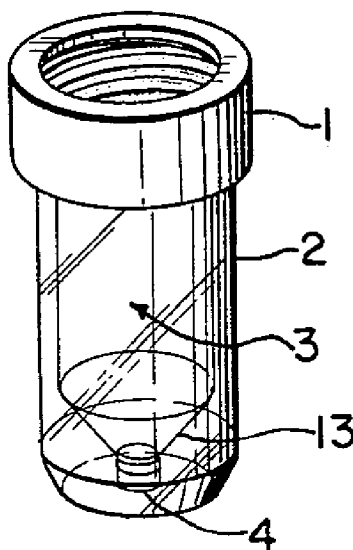


FIG. 1

Applicant respectfully points out that Evans discloses a cell suspension apparatus having inner (3) and outer (2) chambers. Inner chamber (3) having an opening or inlet (4) (See Col. 3 lines 21 to 32, shown below).

As illustrated in FIG. 1 the cell suspension apparatus when fully assembled consists of two main portions, a cap portion 1 and a body portion 2, which is also referred to as the outer chamber 2, when chambers 2 and 3 are separate units. The interlocking means and filter means are not visible because they are held within cap 1. The chamber 2 is shown, in this embodiment, with an inner chamber 3, in which the concentration of the cells occurs. An opening 4 communicating with the inner chamber 3, is shaped to receive, in a sealed condition, the tip of an apparatus for introducing fluid into the chamber, such as a standard syringe.

Thus the inner chamber (3) of Evans is not a solid partition as claimed in the present invention.

For this reason applicant submits that independent claim 1 and dependent claims 5, 6, are not anticipated by the Evans reference.

Nor would Evans render claim 1 obvious.

There is no suggestion in Evans whatsoever to have a solid partition positioned within the housing between the first and second ends. In fact, the incorporation of a solid partition in would destroy the function of Evans cell suspension apparatus as an opening (4) is required in inner chamber (3) in order to mate with the tip of a syringe to aspirate the sero-sanguineous specimen to be analyzed (See Col. 5 lines 1 to 35).

Accordingly, it is submitted that the container assembly as defined by claim 1 is not taught or suggested by Evans. Therefore as claims 7-9 are dependent on claim 1, claims 7-9 are patentable over the cited reference.

Conclusion

In view of the remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

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